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PATENT
Customer Number 22,852
Attorney Docket No. 1147.0142

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of:	
U.S. Patent No. 5,750,338 Mark L. Collins et al.	Group Art Unit: 1655
	Examiner: D. Johannsen
Reissue Serial No.: 09/533,906	
Filed: March 8, 2000	
For: TARGET AND BACKGROUND CAPTURE METHODS WITH AMPLIFICATION FOR AFFINITY ASSAYS	

REISSUE LITIGATION BOX

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

NOTICE REGARDING RELATED LITIGATION

Patent Owner Vysis, Inc. brings to the attention of the Office the following papers from the currently pending litigation between the Patent Owner and Gen-Probe, the Protestor. These papers relate to Gen-Probe's recently-decided motion for partial summary judgment of noninfringement, as follows:

- Gen-Probe's Notice of Motion and Motion for Partial Summary Judgment, Memorandum of Points and Authorities in Support Thereof, Separate Statement of Undisputed Facts in Support Thereof, Declaration of R. William Bowen in Support Thereof, Declaration of Dr. Joseph O. Falkinham in Support Thereof, Declaration of Dr. Matthew Longiaru in Support Thereof, Stipulation and Proposed Order Allowing Gen-Probe to File Under Seal Certain

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Documents in Support Thereof, and Notice of Lodgment in Support Thereof, and Proof of Service;

- Vysis' Opposition to Gen-Probe's Motion for Partial Summary Judgment, Declaration of Thomas W. Banks in Support Thereof, Declaration of Dr. David H. Persing in Support Thereof, Defendant's Statement of Disputed Facts in Opposition, and Notice of Lodgment of Case Authority not in Official Reporter System in Support Thereof;

- Stipulation and Order Permitting Gen-Probe to File Reply Memorandum; Gen-Probe's Reply Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment (Exhibit C to the Stipulation and Order), Stipulation and Proposed Order allowing Gen-Probe to File under Seal Certain Documents in Support Thereof, Reply Notice of Lodgment in Support Thereof; Reply Declaration of Stephen P. Swinton in Support Thereof, Reply Declaration of R. William Bowen in Support Thereof, Reply Declaration of Dr. Joseph O. Falkinham in Support Thereof, Reply Declaration of Christine Gritzmacher in Support Thereof; and

- Order Granting Motion for Partial Summary Judgment of Noninfringement of the '338 Patent; Claim Construction of the term "Amplifying" as found in the '338 Patent.

REMARKS

Gen-Probe's Motion sought partial summary judgment of noninfringement by asserting that its nucleic acid tests use specific probes in the amplification step but that the claims of the '338 Patent encompass only non-specific amplification. Vysis opposed the motion, pointing to the prosecution history of the '338 patent, which establishes that both the PTO and the Patent Owner viewed the term "amplification" in the '338 patent claims as encompassing specific amplification techniques such as PCR. The trial court accepted Gen-Probe's asserted

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